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August 4, 2014

Via E-Mail

Kevin Brown
Project Manager
San Francisco Bay RWQCB (Region 2)
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Written Comments regarding Staff Report and Tentative Orders – Site Cleanup Requirements for 1643 contra Costa Boulevard and 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County

Dear Mr. Brown,

This letter and the attached documents serve as written comments on the above-mentioned matter to the San Francisco Bay Regional Water Quality Control Board (RWQCB) on behalf of our clients, Ryan and Anne Schaeffer, who live at 95 Cynthia Drive, Pleasant Hill, California ("Schaeffer Property"). These comments are submitted in compliance with the August 4, 2014, deadline set in your transmittal letter of July 2, 2014. These comments on behalf of the Schaeffers are provided by Paladin Law Group, LLP, and by EnviroAssets, Inc. The attached written comments and technical documents are hereby incorporated in this submittal.

In addition to the attached comments, we request the tentative order regarding the 1705 Contra Costa Boulevard Property ("Chevron Property") be amended to include further reasons why Chevron is named as a discharger. Specifically, as the RWQCB is aware, Chevron was the owner and/or operator of the Chevron Property during at least two major trenching, grading, remodeling, and waste oil tank replacements, all without addressing the source of the pollution. These activities repeatedly disturbed and redistributed contaminated soil at the property. These activities make Chevron liable under the Resource Conservation and Recovery Act (RCRA) for *handling*,¹ *disposing of*,² and *transporting*³ wastes at the site because it excavated, graded, and thereby spread and dispersed contaminated soil around the site. (See, e.g., *Kaiser Aluminum v. Catellus Development Corp.* (9th Cir. 1992) 976 F.2d 1338, 1342-1343 (involving the Comprehensive Environmental

¹ RCRA does not define "handling." "However, in ordinary usage, to 'handle' something is 'to deal with or have responsibility' for it." (*Lincoln Properties, Ltd. v. Higgins* (E.D. Cal. 1993) 1993 WL 217429, at *15 (quoting American Heritage Dictionary 592 (2nd College ed.1985).)

² RCRA defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." (RCRA § 1004(3), 42 U.S.C. § 6903(3).)

³ RCRA does not define "transportation." However, it is defined in RCRA regulations as "the movement of hazardous waste by air, rail, highway, or water." (40 C.F.R. § 260.10.)



Response, Compensation, and Liability Act (CERCLA), which uses same definitions of “disposal” and “transportation” as RCRA). Also, Chevron had actual knowledge of the contamination at its property and failed to adequately address that contamination and thus allowed the contamination to further spread both during its pumping of groundwater at the site and by migration in the sewer, groundwater, and soil vapor at and emanating from the Site.

Also, considering the fact that the two plumes of contamination, one emanating from each of the subject properties, are commingled and indivisible, and have moved at least into part of the surrounding residential neighborhood, we request that the RWQCB define the “Site,” for purposes of the tentative orders, to include the environment, including soil, groundwater, and vapor, and buildings, and any location at which hazardous substances, hazardous materials, or solid waste has come to be located or may be threatened with such contamination, including the Schaeffer Property, the surrounding neighborhood, and within the 1600-1700 blocks of Contra Costa Boulevard, Pleasant Hill, California. This definition corresponds with the comprehensive definition of “facility” under CERCLA § 101(9), as incorporated into the California Hazardous substance Account Act (HSAA) definition of “Site.” Cal. Health & Safety Code § 25323.9.

We have attempted to keep our comments to a minimum in the hope that the necessary investigation and remediation by the named parties will commence sooner rather than later. Furthermore, we thank the RWQCB for its efforts to require many of the responsible parties to complete the necessary investigation and remediation.

Very truly yours,

John R. Till
PALADIN LAW GROUP® LLP

Enclosures:
Comments by EnviroAssets, Inc.

August 4, 2014

Kevin Brown
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, Ca 94612

RE: COMMENTS ON Transmittal of Staff Report and Tentative Orders – Site Cleanup Requirements for 1643 Contra Costa Boulevard and 1705 Contra Costa Boulevard, Pleasant Hill, Contra Costa County

Dear Mr. Brown:

This letter provides comments on the Tentative Orders for the sites listed above. These comments have been kept to a minimum to allow the process to move forward and in anticipation of the additional investigation activities outlined in the orders.

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C1 On page 2, first paragraph, the Tentative Order states that "the plume currently extends beneath a residential subdivision to the north of the shopping center". We note that the plume also extends beneath commercially zoned properties north of the shopping center.

C2 On page 2, third paragraph, the Tentative Order notes that "[a]ccording to GVP" after March 1991 "the dry cleaner became a "drop-off" and clothes were cleaned at an off-Site facility". The paragraph does not note that dry cleaning equipment with solvent remained on the site until at least 1999. The continuing presence of the charged equipment suggests a significant potential that an existing dry cleaning business would have continued to utilize its equipment, and if not, that mothballed equipment charged with solvent present a significant continuing risk of release with an increased risk that proper maintenance would not occur.

C3 On page 9, bullet number 19, the Tentative Order notes that the Water Board held a public meeting, and "heard and considered all comments pertaining to the proposed site cleanup requirement for the Site". The date for that meeting should be provided in the Tentative Order.

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C4 We note that the Water Board chose not to include the Central Contra Costa Sanitary District (CCCSD) as a discharger in either Tentative Order. This decision is based on conclusions provided in the attached Staff Report that concluded "there is no direct evidence the leakage contributed substantially to the creation of the CVOC [chlorinated volatile organic compounds] commingled groundwater plume". This conclusion appears to be based largely an increasing gradient of concentrations of soil vapor proximate to manhole M46 and "[f]ate and



transport modeling (PES Environmental, Inc., 2013)". We note the following significant flaw in these observations:

- Groundwater depths in shallow groundwater in the vicinity of manhole M46 are variable and intermittently in direct contact with the sewer system. Therefore, the depth that chemicals would have escaped from the sewers in the vicinity of M46 and the depth of groundwater is equivalent. Additionally, both pure solvent and solvent vapor are heavier than water and air and are known to migrate down to hydrogeological contacts including capillary zones. These physical facts place elevated concentrations from sewer releases at the same elevation as groundwater and undermine the conclusion that "the highest concentrations of PCE in soil vapor samples were at lower depths near the groundwater table, indicating that shallow groundwater is the likely source of the CVOCs rather than the soil surrounding the sewer lines".
- There is no question that concentrations of contaminants of concern ("COCs") are elevated in the downgradient residential area and specifically in soil gas around manhole M46. However, concentrations of soil gas taken upgradient of M46 and downgradient of the shopping center do not show similar concentrations. In its May 28, 2013, letter, PES concludes that there is a "continuing, unremediated source of PCE" upgradient of the residential neighborhood and specifically well MW-8 which lies upgradient of sewer manhole M46 and uses fate and transport modelling to suggest that the elevated concentrations of contaminants of concern within the residential area downgradient "are consistent with contaminant transport mechanisms acting on a PCE release at the former P&K Cleaners". However, fate and transport modelling with a continuing source anticipates a continuous plume and cannot account for the contaminant distribution at the site where significant downgradient contamination leapfrogs portions of the plume that lie closer to the presumed source. Instead, this type of contaminant distribution suggests a secondary release point, such as the vicinity of manhole M46. The Water Board is requiring the dischargers to perform a conduit study "to evaluate the role of subsurface utilities in the migration or accumulation of CVOCs in the subsurface" among other additional investigations. We believe that it is premature for the Water Board to conclude that the Central Contra Costa Sanitary District (CCCSD) is not a Discharger based on these facts and the ongoing development of site information.

C5 The Tentative Orders and Staff Report to not specifically address that the sewer line conveying wastewater from sewer laterals at the Chevron and Gregory Village properties flow, as shown on the attached map (EXHIBIT A), from R99 and R61 (R61 is a historical manhole location) through M60, M59, M46, M47 and to M67. Manhole M46 serves as a junction, immediately adjacent to the Schaeffer Property, with a sewer line conveying wastewater from the residential neighborhood upstream of M45. The Gregory Village and Chevron sewers flow in a northerly direction to M46, as shown on the attached exhibit.

Respectfully,



Michael Harrison, P.E.
EnviroAssets, Inc.



EXHIBIT A

